

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

PHILLIP ANGEL GARCIA,

Plaintiff,

v.

Civ. No. 08-0013 WJ/RLP

U.S. MARSHALS, BOARD OF COUNTY  
COMMISSIONERS,

Defendants.

ORDER

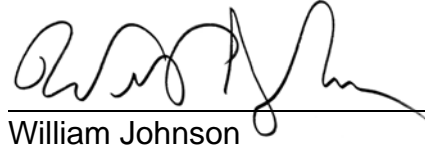
THIS MATTER comes before the Court on the Magistrate Judge's Report & Recommendation [Doc. 14], which was entered on the docket on April 3, 2008 after Plaintiff failed to respond to the Court's Order to Show Cause [Doc. 13]. The objections to the Report & Recommendation were due on or before April 22, 2008.

On May 9, 2008 Plaintiff filed both a change of address [Doc. 15] and his untimely objections to the Report & Recommendation [Doc. 16]. The Tenth Circuit Court of Appeals has "adopted a firm waiver rule when a party fails to object to the findings and recommendations of the magistrate. . . . Our waiver rule provides that the failure to make timely objections to the magistrate's findings or recommendations waives appellate review of both factual and legal questions." *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991) (citations omitted). If justice requires, the waiver rule will not be applied. *Id.*

In this case mailings to the Plaintiff were first returned in February, 2008. He had no contact with the Court from that time until he called the Court in May, 2008 to advise his change of address. In short, he has failed to show the diligence required for the Court to waive the procedural bar.

IT IS THEREFORE ORDERED that the Magistrate Judge's Report & Recommendation is adopted by the Court and this case is dismissed without prejudice.

IT IS SO ORDERED.



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William Johnson  
United States District Judge